



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0164; FRL-9949-07-Region 9]

**Determination of Attainment of the 1-Hour Ozone National Ambient
Air Quality Standard in the San Joaquin Valley Nonattainment
Area in California**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the San Joaquin Valley nonattainment area has attained the 1-hour ozone National Ambient Air Quality Standard. This determination is based on sufficient, quality-assured, and certified data for the 2012-2014 period. Ozone data collected in 2015 show continued attainment of the standard in the San Joaquin Valley.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID Number EPA-R09-OAR-2016-0164. The index to the docket is available electronically at <http://www.regulations.gov> or in hard copy at the EPA Region IX office, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some

information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed below.

FOR FURTHER INFORMATION CONTACT: Anita Lee, (415) 972-3958, or by email at lee.anita@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean the EPA.

Table of Contents:

- I. Background
- II. Public Comments
- III. The EPA's Responses to Comments
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background

On May 18, 2016, the EPA proposed to determine that the San Joaquin Valley ("Valley") 1-hour ozone nonattainment area had attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS or "standard") based on sufficient, quality-assured, and certified data from the most recent three-year period (2012-

2014).¹ We noted that preliminary data for 2015 were consistent with continued attainment in the San Joaquin Valley. The Valley covers approximately 23,000 square miles and includes all of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare counties, as well as the western half of Kern County.²

In our proposed rule, we provided background information on the 1-hour ozone standard, the designations and classifications of the San Joaquin Valley under the Clean Air Act (CAA or "Act") for the 1-hour ozone standard, and the EPA's prior actions related to the 1-hour ozone standard in the Valley.³ We also described how we determine whether an area's air quality meets the 1-hour ozone standard, and identified the relevant air monitoring agencies in the San Joaquin Valley and their respective ozone monitoring networks, network plans, and annual certifications of ambient air monitoring data.⁴ In our proposed rule, we also discussed the requests, and associated analyses, submitted by the California Air Resources Board (CARB) and the San Joaquin Valley Air Pollution Control District ("District"), that the EPA find that the Valley has attained the 1-hour ozone standard.⁵

¹ See 81 FR 31206 (May 18, 2016).

² See 40 CFR section 81.305.

³ See 81 FR 31206 at 31207 (May 18, 2016).

⁴ *Id.* at 31208-31210.

⁵ *Id.* at 31208.

As discussed in our proposed rule, an area attains the 1-hour ozone standard if the highest three-year average of expected exceedances is less than or equal to 1 expected exceedance. Table 1 in our proposed rule summarized the expected 1-hour ozone exceedances, per year and as an average over the 2012-2014 period, at the regulatory monitoring sites in the San Joaquin Valley. During the 2012-2014 period, the highest three-year average of expected exceedances at any site in the Valley was 0.7 expected exceedances at Fresno - Sierra Skypark in Fresno County. At the time of our proposed determination, preliminary data for 2015 was available but not yet certified. We provided preliminary data for 2015 that showed continued attainment of the 1-hour ozone standard.⁶ All three agencies operating regulatory monitoring sites in the San Joaquin Valley submitted their 2015 data certifications to the EPA by May 10, 2016, shortly following the release of our proposed rule.⁷

⁶ *Id.* at 31209, Table 1, footnote 1 citing to Quicklook Reports providing ambient air quality data from 2012-2015 in the docket for this action.

⁷ The Regional Administrator for the EPA Region 9 office signed the proposed rule on May 3, 2016, and it was published in the **Federal Register** on May 18, 2016. The California Air Resources Board, the District, and the National Park Service all submitted their 2015 data certifications by May 10, 2016. See (1) letter from Ravi Ramalingam, Chief, Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division, CARB, to Elizabeth Adams, Acting Director, Air Division, EPA Region IX, certifying calendar year 2015 ambient air quality data and quality assurance data, dated May 10, 2016; (2) letter from Jon Klassen, Program Manager, SJVAPCD, to Deborah Jordan, Director, Air Division, EPA Region IX, certifying calendar year 2015 ambient air quality data and quality assurance data, dated May 9, 2016; and (3) letter from Barkley Sive, Program Manager, NPS, to Lew Weinstock, EPA, certifying 2015 ozone data, dated April 27, 2016.

For this final action, we have repeated our review of the 2015 data now that the data have been certified to confirm that the data are consistent with continued attainment of the 1-hour ozone standard in the San Joaquin Valley. In Table 1 below, we supplement the corresponding table from our proposed rule with 2015 data. As shown in Table 1 below, the highest three-year average of expected exceedances at any site in the Valley for 2013-2015 was 0.4, at Fresno - Sierra Skypark in Fresno County. Based on complete, quality-assured, and certified data, the expected exceedances in Table 1 indicate continued attainment of the 1-hour ozone standard in the SJV over 2013-2015.⁸

Table 1 - One-Hour Ozone Data for the San Joaquin Valley One-Hour Ozone Nonattainment Area¹						
Site (AQS ID)	Expected Exceedances by Year				Expected Exceedances 3-yr average	
	2012	2013	2014	2015	2012-2014	2013-2015
FRESNO COUNTY:						
Clovis - Villa (06-019-5001)	0.0	0.0	0.0	0.0	0.0	0.0
Fresno - Drummond Street (06-019-0007)	1.0	0.0	0.0	1.0	0.3	0.3
Fresno - Garland (06-019-0011)	1.0	0.0	0.0	0.0	0.3	0.0
Fresno - Sierra Skypark (06-019-0242)	1.0	0.0	1.1	0.0	0.7	0.4
Parlier (06-019-4001)	1.0	0.0	0.0	0.0	0.3	0.0

⁸ As discussed in our proposed rule, a "complete" data set for determining attainment of the ozone standard is generally one that includes three years of data with an average percent of days with valid monitoring data greater than 90 percent with no single year less than 75 percent. The 2013-2015 data summarized in Table 1 from all of the regulatory sites meet this criterion. See June 20, 2016 spreadsheet titled "20160620_QLRpt_SJV_1hrO3_2012-2015.xlsx," in the docket for this final action.

Tranquility (06-019-2009)	0.0	0.0	0.0	0.0	0.0	0.0
KERN COUNTY:						
Arvin - Di Giorgio (06-029-5002)	0.0	0.0	0.0	0.0	0.0	0.0
Bakersfield - Muni (06-029-2012)	0.0	0.0	0.0	0.0	0.0 ²	0.0
Bakersfield - California (06-029-0014)	0.0	0.0	0.0	0.0	0.0	0.0
Edison (06-029-0007)	0.0	0.0	0.0	0.0	0.0	0.0
Maricopa (06-029-0008)	0.0	0.0	0.0	0.0	0.0	0.0
Oildale (06-029-0232)	0.0	0.0	0.0	0.0	0.0	0.0
Shafter (06-029-6001)	0.0	0.0	0.0	0.0	0.0	0.0
KINGS COUNTY:						
Hanford - Irwin (06-031-1004)	0.0	0.0	0.0	0.0	0.0	0.0
MADERA COUNTY:						
Madera - Pump Yard (06-039-0004)	0.0	0.0	0.0	0.0	0.0	0.0
Madera - City (06-039-2010)	0.0	0.0	0.0	0.0	0.0	0.0
MERCED COUNTY:						
Merced - Coffee (06-047-0003)	0.0	0.0	0.0	0.0	0.0	0.0
SAN JOAQUIN COUNTY:						
Stockton - Hazelton (06-077-1002)	0.0	0.0	0.0	0.0	0.0	0.0
Tracy - Airport (06-077-3005)	0.0	0.0	0.0	0.0	0.0	0.0
STANISLAUS COUNTY:						
Modesto - 14 th Street (06-099-0005)	0.0	0.0	0.0	0.0	0.0	0.0
Turlock (06-099-0006)	0.0	0.0	0.0	0.0	0.0	0.0
TULARE COUNTY:						
Porterville (06-107-2010)	0.0	0.0	0.0	0.0	0.0	0.0
Sequoia National Park - Ash Mountain (06-107-0009)	0.0	0.0	0.0	0.0	0.0	0.0
Visalia - Church Street (06-107-2002)	0.0	0.0	0.0	0.0	0.0	0.0

¹ Source: Quicklook Report, "20160620_QLRpt_SJV_1hr03_2012-2015.pdf," June 20, 2016; and "20160620_QLRpt_SJV_1hr03_2012-2015.xlsx," June 20, 2016 (in the docket for this final action).

² Based on CARB's missing data analysis for this site, at most one exceedance could have been recorded during the first half of 2012 if the site had been operational during that period. Assuming such an exceedance had occurred, the 3-year average of expected exceedances for the 2012-2014 period at the Bakersfield-Municipal Airport site would have been 0.3, which is less than the corresponding value at Fresno - Sierra Skypark (0.7) and less than the NAAQS.

We proposed to determine that the San Joaquin Valley has attained the 1-hour ozone standard based on our analysis of the ambient air quality data, as well as our review of 1-hour ozone trends in the Valley, data completeness, and the adequacy of the ozone monitoring network.⁹ We noted that if we finalize the proposed determination, to the extent not already fulfilled, the requirements for the state to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable progress and other plans related to attainment of the 1-hour ozone standard for San Joaquin Valley shall be suspended until such time as the area is redesignated as attainment for the current ozone NAAQS or a redesignation substitute for the 1-hour ozone standard is approved, at which time the requirements no longer apply.¹⁰ If, however, prior to such redesignation or approval of such redesignation substitute, the EPA determines that San Joaquin Valley has violated the 1-

⁹ See 81 FR 31206, at 31208-31211 (May 18, 2016).

¹⁰ See 40 CFR 51.1118.

hour ozone NAAQS, then the area is again required to submit such attainment-related plans.¹¹

II. Public Comments

We solicited comment on the proposed determination of attainment and opened a 30-day public comment period. The comment period closed on June 17, 2016. During the comment period, we received a comment from a member of the public in support of the proposal, and a comment letter from the Western States Petroleum Association (WSPA). WSPA also expressed support for the proposed attainment determination but recommended concurrent revocation of the District's penalty fee rule based on the District's demonstration that the attainment of the 1-hour ozone standard is due to permanent and enforceable emissions reductions and based on the sunset clause in the penalty fee rule itself. We respond to WSPA's comment in the following section of this document.

III. The EPA's Responses to Public Comments

In our proposed rule, we noted that in addition to the request for a clean data determination, the District provided documentation in its staff report intending to support a finding that attainment of the 1-hour ozone standard is due to permanent and enforceable emission reductions. As discussed in our proposed rule, the EPA's final implementation rule for the 2008

¹¹ *Id.*

ozone standard established a mechanism, referred to as a "redesignation substitute," through which an area may shift to contingency status those requirements, such as penalty fee program requirements under CAA section 185, to which an area had remained subject under the EPA's anti-backsliding regulations governing the transition from revoked ozone standards (such as the 1-hour ozone standard) to current ozone standards.

To invoke the redesignation substitute, a state must submit two things: (1) a demonstration that the area has attained the revoked ozone NAAQS due to permanent and enforceable emission reductions, and (2) a demonstration that the area will maintain the revoked NAAQS for 10 years from the date of the EPA's approval of this showing.¹² The District submitted the first required demonstration to the EPA but did not submit the second required component of the redesignation substitute mechanism, *i.e.*, the demonstration that the area will maintain the 1-hour ozone standard for 10 years. Because neither the state nor the District has submitted a complete demonstration required to invoke the redesignation substitute mechanism, we stated in our proposed rule that action on a single element (*i.e.*, the demonstration of attainment due to permanent and enforceable emissions reductions) was not appropriate without the second required element (*i.e.*, the 10-year maintenance demonstration).

¹² 40 CFR 51.1105(b).

When the state submits a demonstration that the San Joaquin Valley will maintain the 1-hour ozone standard for 10 years, we will review and consider whether both demonstrations together meet the requirements of the redesignation substitute mechanism for the 1-hour ozone standard.

Moreover, we note that the District's penalty fee rule does not automatically sunset upon the EPA's final determination of attainment for the 1-hour ozone standard. The penalty fee rule (*i.e.*, District Rule 3170 ("Federally Mandated Ozone Nonattainment Fee")) provides, in relevant part:

"The fees established by this rule shall cease to be applicable when the San Joaquin Valley Air Basin (SJVAB) has met the revoked federal one-hour ambient air quality standard for ozone.

For the purposes of this rule, the San Joaquin Valley Air Basin shall have met the revoked federal one-hour ambient air quality standard for ozone upon EPA's determination, through notice-and-comment rulemaking, of concurrence with a demonstration by the APCO and the California Air Resources Board that the average number of days per calendar year with maximum hourly average concentration above 0.12 ppm is less than or equal to one (1), for each monitor. To make this demonstration, the APCO will, using all available quality assured monitoring data, calculate at each monitor the average number of days over the standard per year during a three-year period according to the procedures found in 40 CFR Part 50 Appendix H, and show that the improvement in air quality is due to permanent and enforceable emissions reductions."

Thus, under the terms of the penalty fee rule, the fee provisions do not sunset simply upon the EPA's determination of attainment of the 1-hour ozone standard. The EPA's concurrence on the demonstration that attainment of the standard is due to permanent and enforceable emissions reductions is also a prerequisite to triggering the sunset clause. While the District has submitted such a demonstration, we indicated in our proposed rule and reiterate above that we are taking no action on the District's demonstration at this time. We will consider the District's demonstration in a separate rulemaking if and when it is supplemented with the 10-year maintenance demonstration element also needed to invoke the redesignation substitute mechanism in 40 CFR 51.1105(b).

IV. Final Action

Based on the analyses in our proposed rule of ambient air quality data, 1-hour ozone trends in the Valley, and the adequacy of the monitoring network in the Valley, as well as our review of 2015 data in this final rule indicating continued attainment of the standard, we are taking final action to determine that the San Joaquin Valley nonattainment area has attained the 1-hour ozone standard. This determination is based on sufficient, quality-assured, and certified data for the period 2012-2014.

V. Statutory and Executive Order Reviews

This action finalizes a determination based on air quality data and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final clean data determination does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) because the SIP obligations discussed herein do not apply to Indian Tribes, and thus will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**Insert date 60 days after date of publication in the Federal Register**].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Oxides
of nitrogen, Ozone, Volatile organic compounds.

Dated: June 30, 2016.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F – California

2. Section 52.282 is amended by adding paragraph (h) to read as follows:

§ 52.282 Control strategy and regulations: Ozone

* * * * *

(h) *Determination of attainment.* EPA has determined that, as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the San Joaquin Valley 1-hour ozone nonattainment area has attained the 1-hour ozone standard, based upon sufficient, quality-assured and certified ambient air quality monitoring data for 2012-2014.

[FR Doc. 2016-16792 Filed: 7/15/2016 8:45 am; Publication Date: 7/18/2016]